

Serial No. 10/643,885

Attorney Docket No. 52493.000344

REMARKS

Claims 1-25 are pending. In this Amendment, claims 20 and 24 are amended to further recite novel features of the claimed invention and for clarity.

No new matter has been added. Support for the amendments may be found in Fig. 10 of the filed patent application, for example.

Reconsideration of the outstanding rejections in the present application are requested based on the following remarks.¹

THE REJECTION UNDER 35 U.S.C. § 103(a)

In the Office Action, claims 1-9, 13-16, 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Suzuki et al (U.S. 5,986,568) in view of Ridgeway (U.S. 5,967,975).

This rejection is traversed.

The features of claim 1 are set forth above.

The Office Action sets forth various alleged teachings of Suzuki.

The Office Action further admits deficiencies of Suzuki. In particular, the Office Action asserts:

Suzuki does not teach disposing a data input portion in the home of the claimant such that the data input portion is disposed in the home of the claimant continuously over a period of time inclusive of a plurality of visits of the caregiver, and such that over such period of time the data input portion is retained by the claimant in the home of the claimant and not retained by the caregiver, and during such period of time data is collected by the data input portion by

¹ As Applicant's remarks with respect to the Examiner's rejections are sufficient to overcome these rejections, Applicant's silence as to assertions by the Examiner in the Office Action or certain requirements that may be applicable to such rejections (e.g., assertions regarding dependent claims, whether a reference constitutes prior art, whether references are legally combinable for obviousness purposes) is not a concession by Applicant that such assertions are accurate or such requirements have been met, and Applicant reserves the right to analyze and dispute such in the future.

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interfacing with the caregiver, and such data is transferred from the data input portion.

(emphasis added)

The Office Action attempts to cure the deficiencies of Suzuki with the teachings of Ridgeway. The Office Action asserts:

Ridgeway teaches a subscriber remote station with health parameter monitoring devices that are self-monitored at home (see for example Ridgeway column 6 lines 1-12 and Fig. 1). One of ordinary skill in the art at the time of invention would have found it obvious to combine the method for documenting home care services as taught by Suzuki with the remote/home health monitors taught by Ridgeway to provide services to remote patients without the hassle of carrying heavy equipments/monitors/devices to the remote patient.

(emphasis added)

Applicant traverses the rejection because even if the teachings of Suzuki and Ridgeway were combined in some manner as proposed, which Applicant does not admit is obvious, the proposed combination still fails to teach each and every feature of the claimed invention.

As set forth in M.P.E.P 706.02(j), 35 U.S.C. 103 authorizes a rejection where, to meet the claim, it is necessary to modify a single reference or to combine it with one or more other references. M.P.E.P 706.02(j) indicates that after indicating that the rejection is under 35 U.S.C. 103, the Examiner should set forth in the Office Action:

- (A) the relevant teachings of the prior art relied upon, preferably with reference to the relevant column or page number(s) and line number(s) where appropriate,
- (B) the difference or differences in the claim over the applied reference(s),
- (C) the proposed modification of the applied reference(s) necessary to arrive at the claimed subject matter, and
- (D) an explanation why one of ordinary skill in the art at the time the invention was made would have been motivated to make the proposed modification.

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M.P.E.P 706.02(j) references the well known requirements of *Graham v. John Deere*. Further, M.P.E.P 706.02(j) notes that it is important for an Examiner to properly communicate the basis for a rejection so that the issues can be identified early and the Applicant can be given fair opportunity to reply.

As acknowledged in the Office Action and set forth above, Suzuki does not teach disposing a data input portion in the home of the claimant such that the data input portion is disposed in the home of the claimant continuously over a period of time inclusive of a plurality of visits of the caregiver, and such that over such period of time the data input portion is retained by the claimant in the home of the claimant and not retained by the caregiver, and during such period of time data is collected by the data input portion by interfacing with the caregiver.

Ridgeway fails to cure such acknowledged deficiencies. Indeed, Ridgeway is not even alleged to teach such features. In particular, Ridgeway fails to teach the recited functionality related to interface with the caregiver. Accordingly, since the Office Action acknowledges that Suzuki fails to teach such features, and does not even allege that Ridgeway teaches such features (so as to cure the deficiencies of Suzuki), Applicant submits that the rejection under 35 U.S.C. 103 is clearly deficient.

On page 2, lines 10-20, the Office Action sets forth response to Applicant's arguments. Specifically, the Office Action asserts:

... Examiner respectfully disagree. Suzuki teaches a caregiver visiting the patient at the patient's house (see for example Suzuki column 9 lines 63-67 and column 10 lines 1-18 and Fig 1). Ridgeway teaches a subscriber remote station located in homes of patients, where physicians have prescribed in home monitoring stations which can save the data gathered to a personal computer (Ridgeway column 2 lines 14-32). So by saving it to a personal computer this is the same as data input portion

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is retained by the claimant in the home of the claimant and not retained by the caregiver. When the data is transmitted to the central this is the same as period of time data is collected by the data input portion by interfacing with the caregiver.

(emphasis added)

Applicant in particular traverses the assertion that “[w]hen the data is transmitted to the central this is the same as period of time data is collected by the data input portion by interfacing with the caregiver.” Applicant respectfully submits that such assertion in the Office Action, reflecting that such two respective features are the “same”, is without any reasonable basis. Applicant submits that data transmitted to the central is NOT the same as period of time data is collected by the data input portion by interfacing with the caregiver. Such are two fundamentally different concepts / features and are simply not the “same.”

Claim 1 recites:

disposing a data input portion in the home of the claimant such that the data input portion is disposed in the home of the claimant continuously over a period of time inclusive of a plurality of visits of the caregiver, and such that over such period of time the data input portion is retained by the claimant in the home of the claimant and not retained by the caregiver, and during such period of time data is collected by the data input portion by interfacing with the caregiver, and such data is transferred from the data input portion, while disposed in the claimant’s house, to the servicing entity in accord with the relationship of the claimant with a servicing entity, and during such period of time the data input portion is used to document only care of the single claimant;

the data input portion interfacing with the caregiver prior to the caregiver providing a service to the claimant so as to input a first data set into the data input portion;

Accordingly, claim 1 recites that “data is collected by the data input portion by interfacing with the caregiver, and such data is transferred from the data input portion, while disposed in the claimant’s house, to the servicing entity in accord with the relationship of the

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claimant with a servicing entity ..." Thus claim 1 recites both the collection of data from the caregiver AND the transfer of that data to the servicing entity.

Thus, the rejection is deficient on second grounds. That is, even assuming arguendo that "... the data is transmitted to the central this is the same as period of time data is collected by the data input portion by interfacing with the caregiver" (which Applicant does not admit) such would still render the rejection deficient in that claim 1 recites both collection AND transfer of the data, as recited in claim 1. In contrast, the Office Action's interpretation of being the "same" (as set forth in the Office Action on page 2, line 18, as discussed above) contemplates one OR the other, i.e., but NOT both - as required by the features of claim 1. In this manner, the rejection is also deficient.

For at least these reasons, independent claim 1, as well as dependent claims 2-7, are patentable over Suzuki. Therefore, the undersigned representative will not address the arguments with respect to claims 2-7 and reserves the right to address these arguments at a later time. Accordingly, it is respectfully requested that the rejection of claims 1-7 under 35 U.S.C. §102(e) be reconsidered and withdrawn.

REJECTION OF CLAIMS 10, 12, & 24 UNDER 35 U.S.C. § 103(a)

Claims 10, 12, and 24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Suzuki in view of Ridgeway and U.S. Patent 7,107,285 to von Kaenel *et al.* ("von Kaenel"). *Office Action*, p. 8. This rejection is traversed. Since claims 10 and 12 are dependent on allowable independent claim 1, dependent claims 10 and 12 are allowable as well. **Moreover, the rejection is inappropriate.** Claim 12 is dependent on claim 11 which stands rejected as being unpatentable over Suzuki in view of Guyan (see

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below and page 9, paragraph 21, of the Office Action).² If the parent claim of claim 12, is rejected in view of Suzuki and Guyan, then, at a minimum, the same references must be used to reject claim 12 as well.

Please note that if claim 12 is rejected in a subsequent Office Action using different references or additional references then asserted in the current Office Action, the subsequent Office Action should be a Non-Final Office Action.

Regarding independent claim 24, since claim 24 contains similar limitations as argued above with respect to independent claim 1, e.g., a data input portion disposed in the home of the claimant, and since von Kacnal does not cure the deficiencies of Suzuki, claim 24 is allowable for the same reasons asserted above with respect to claim 1.

Therefore, the undersigned representative will not address the arguments with respect to claims 10, 12, and 24 and reserves the right to address these arguments at a later time. Withdrawal of the rejection of claims 10, 12, and 24 is requested.

REJECTION OF CLAIMS 11 and 20-23 UNDER 35 U.S.C. § 103(a)

Claims 11 and 20-23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Suzuki in view of Ridgeway and U.S. Patent 7,124,112 to Guyan *et al.* ("Guyan"). *Office Action*, p. 9. This rejection is traversed. Since claim 11 is dependent on allowable independent claim 1, dependent claim 11 is allowable as well.

Regarding independent claim 20, since claim 20 contains similar limitations as argued above with respect to independent claim 1, e.g., a data input portion disposed in the home of the claimant, and since Ridgeway does not cure the deficiencies of Suzuki, claim

² Such deficiency was noted in Applicant's prior Response.

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20, as well as dependent claims 21-24, are allowable for the same reasons asserted above with respect to claim 1.

Therefore, the undersigned representative will not address the arguments with respect to claims 11 and 20-23 and reserves the right to address these arguments at a later time. Withdrawal of the rejection of claims 11 and 20-23 is requested.

REJECTION OF CLAIM 17 UNDER 35 U.S.C. § 103(a)

Claim 17 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Suzuki in view of Ridgeway and U.S. Patent 5,357,427 to Langen et al. ("Langen"). *Office Action*, p. 13. This rejection is traversed. Since claim 17 is dependent on allowable independent claim 1 and since Langen does not cure the deficiencies of Suzuki with respect to claim 1, dependent claim 17 is allowable as well. Therefore, the undersigned representative will not address the arguments with respect to claim 17 and reserves the right to address these arguments at a later time. Withdrawal of the rejection of claim 17 is requested.

REJECTION OF CLAIM 25 UNDER 35 U.S.C. § 103(a)

Claim 25 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Suzuki in view of Ridgeway and von Kaenel and in view of Guyan. *Office Action*, p. 13. This rejection is traversed. Since claim 25 is dependent on allowable independent claim 24 and since the applied art does not cure the deficiencies of Suzuki with respect to claim 24, dependent claim 25 is allowable as well. Therefore, the undersigned representative will not address the arguments with respect to claim 25 and reserves the right to address these arguments at a later time. Withdrawal of the rejection of claim 25 is requested.

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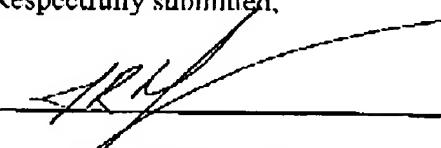
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CONCLUSION

The foregoing is submitted as a full and complete Response to the pending Office Action. Favorable consideration of the claims is requested. If the Examiner believes any informalities remain in the application which may be corrected by Examiner's Amendment, or if there are any other issues which may be resolved by telephone interview, a telephone call to the undersigned attorney at (703)714-7449 is respectfully solicited.

Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 50-0206, and please credit any excess fees to such deposit account.

Respectfully submitted,



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